IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2 OF 2007

Siddhivinayak C.H.S. (Proposed)] .. Petitioner

Versus

1. M.C.G.B. & 4 ors.] .. Respondents

Mr. S.U. Kamdar with Mr. G.S. Kulkarni and Mrs. Swati Deshpande for the petitioner.

Mr. D.H. Mehta with Mrs. A.K. Savla for the respondents No.1 to 3.

Mr. Denzil D'Mello for respondent No.4.

Mr. K.K. Singhvi, senior counsel with Mr. J. Reis and Mr. Yadunath Chaudhari for respondent No.5.

CORAM: R.M. LODHA, &
SMT. NISHITA MHATRE, JJ.

DATED: 10TH JANUARY, 2007

P.C. :

. We heard the counsel for the petitioner, the counsel for respondents No.1, 2, 3 and the senior counsel for respondent No.5.

2. The petitioner is a proposed society having 32 members employed in Municipal Corporation of Greater Mumbai. All the members claim to be part of superior staff of the Corporation. The case of the society is

that an application was made to the Corporation for allotment of plot of land admeasuring 2625 square meters situate at Khar being surplus land of Khar Pumping Station. By the letter dated 2nd May, 1991 (Exhibit-C) the petitioner was informed by the Corporation that the request for allotment of the plot at Khar Pumping Station to the society is under consideration. The Society was further informed that the request for plot can only be considered if the proposed society enrolls 50% of the members of superior staff of Chief Engineer (SO)'s department, 25% from the superior staff of other department and 25% from the waiting list of the Municipal employees of superior staff with the Estate Department. For consideration of the petitioner's request for allotment of the aforesaid plot minor modification in the development plan under Section 37(1) of the Maharashtra Regional & Town Planning Act, 1966 was required and, accordingly, on the representation made by the Municipal Corporation, the State Government accepted the Corporation's proposal for minor modification by issuing corrigendum on 4th October, 1999 duly published in Government Gazette dereserving the said land for the housing or superior staff who were in that class of service on the date of Notification (4th October, 1999).

3. It appears that the Corporation found that the process of allotment of the said piece of land to the petitioner-society and its disposal as per Section 92 of the Mumbai Municipal Corporation Act, 1888 may take about three to four years. The Corporation authorities, therefore, thought fit that instead of keeping the subject land idle, the said land can be utilised for putting up structure for transit accommodation of slum dwellers under the rehabilitation project. Accordingly, the Corporation decided that the structure for transit accommodation for rehabilitation of slum dwellers be allowed to be put up by respondent No.5. It is this action which is sought to be challenged by the petitioner in this Writ Petition.

4. From the available material, it is clear that the petitioner has not acquired any legal right in the subject property. As a matter of fact, there is no firm allotment of the said land in favour of the petitioner. Municipal land can only be disposed of by the Corporation in accordance with Section 92 of the Mumbai Municipal Corporation Act, 1888 and in accord with that provision, the said land has not been disposed of to the petitioner so far. However, the Corporation is not

denying the commitment given to the petitioner-society for allotment of subject land. That is clear from the document dated 14th July, 2006 (Exhibit-T) available on record. Paragraph 5(e) thereof reads thus:

> "5(e) It is necessary to consider that the Siddhi Vinayak Co.op. Housing Society has strived hard for fifteen years for processing the allotment of land. However, the commitment given to them is administrative while commitment given to 26 societies is legislative. As soon as the legislative commitment of 26 societies is taken to logical end, it is the turn of Siddhi Vinayak Society, where the DL can be put to IC/Corporation. However, the transit camp should not come in a way once the allotment of land to the Society is decided to be process. Hence, it shall be necessary that there should be a clause in terms and conditions of the allotment of land for transit camp, stating that M/s. Shivalik Ventures shall demolish the transit camp, at three months notice."

5. In our considered view, despite the fact that no legal right has been created in favour of the petitioner in the subject land, the Corporation has taken fair stance accepting the administrative commitment given to the petitioner for allotment of the said land to them. Until the entire process of disposal takes place, there is nothing wrong if the Corporation uses its land for putting up temporary structure in nature of transit camps for rehabilitation of slum dwellers. We find no merit in challenge to the said

action of the Corporation at the instance of the petitioner.

6. Writ Petition has no merit and is dismissed in limine. Ad-interim order is discharged. Oral prayer for extension of the said order is rejected.

Sd/-
[R.M. LODHA, J.]

Sd/-
[SMT. NISHITA MHATRE, J.]